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REMARKS/ARGUMENTS

Reconsideration of this patent application is respectfully requested in view of the foregoing amendments and the following remarks.

Claims 1-20, 24, 25, 30 and 32 have been canceled. Claims 21-23, 26-29, 31, and 33-37 remain in the application. Claims 21, 22, 35-37 have been amended.

The Examiner has rejected claims 35 and 37 under 35 U.S.C. 112 second paragraph. Claims 35 and 37 have been amended to overcome this rejection. In particular, claims 35 and 37 have been amended to state that the loading track is positioned at the bottom end of the rack bays.

The Examiner has rejected claims 21-23, 25, 26, 28, 31, and 33-37 under 35 U.S.C. 103(a) as being unpatentable over Kita in view of Becker.

Claims 21, 22 and 35-37 have been amended to overcome this rejection.

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For an Examiner to make an obvious type rejection, three criteria must be met, (i) there must be some suggestion or motivation to combine the references; (ii) there must be a reasonable expectation of success; and (iii) the prior art references must teach or suggest all of the claim limitations. See MPEP 2143.

The Federal Circuit has also outlined this principle by stating that before the PTO may combine the disclosures of two or more prior art references in order to establish prima facie obviousness, there must be some suggestion for doing so... In Re Jones, 958 F.2d 347, 21 U.S.P.Q. 2d 1941 (Fed Cir. 1992), See Also In Re Fine, 837 F.2d 1596, 1598-99 (Fed Cir. 1988).

The applicant believes that there is no suggestion in this case for any type of combination. Kita does not suggest using multiple columns or aisles, and the design of Kita would not suggest this combination either. Kita actually teaches away from using multiple aisles because it uses solid vertical lifters. A solid vertical lifter shown in FIG. 1 would not allow a loading track to pass below, and a paternoster type device shown in FIG. 17 of that reference is completely unlike the vertical lifter of

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*Becker*. In addition, the reference to *Becker* does not disclose any suggestion for combining with the elements or steps of *Kita* either. Therefore, the applicant believes that independent claims 21, 35, 36, and 37 as amended are patentable over the above references.

None of the references teach all of the claim limitations either.

In particular, claims 21 and 36, have been worded so as to state the following step:

(a) transporting the load via a portable transport device in a first horizontal direction along a loading track that extends along front ends of the plurality of rack bays to a stationary vertical conveyor at a front end of a target rack bay;

This step has been amended so that with this step, the process claimed in claims 21 and 36 is patentable over the above cited references taken either singly or in combination.

For example, *Kita* discloses a system wherein there is a first transport device or inner picker (6) disposed in a set of inner

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racks. There is also an outer picker 11 that is coupled to a vertical conveyor. This outer picker 11 is coupled to and "engaged in guide grooves 8a vertically provided on the side surfaces of the columns 8." as stated in column 4 lines 37-39.

Kita does not mention any other outer picker that can be used for transporting containers or packages on a loading track. Therefore, this first step is not disclosed in this first embodiment of Kita. The second embodiment of Kita also does not disclose any other outer pickers or other transport devices for transporting the loads onto a vertical conveyor.

In the second embodiment of Kita as shown in FIG. 18, there is a conveyor belt 59 which is used to load and unload containers from the vertical conveyor. Therefore, there is no need for a transport device that would deposit the carton or package on a vertical conveyor.

In addition, the invention according to claim 21 is entirely different because it recites the following step:

c) depositing the load on said stationary vertical

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conveyor via a lifting/pushing device on said transport device which is on said loading track;

There is no step or process in Kita as disclosed in the above step. This is because the design of Kita is entirely different and operates differently from the design of the present invention.

In addition, the reference to Becker teaches an entirely different process wherein the container moves along a track and then, rather than moving from a transport device via a lifting and pushing device, the container is placed on a portion of a loading track which is then raised and lowered. This is shown in FIG. 1 of Becker wherein portions of the loading track are removable and can be raised or lowered but separated from the remainder of the loading track. This design means that there is no need for a separate transport device with a lifting and pushing device. Instead, Becker discloses a more complicated loading track which has sections which can be separated from each other. In addition, FIG. 2 of Becker discloses the loading track wherein this track can move laterally or horizontally as driven on a pulley system rather than via a vertical conveyor as disclosed in FIG. 1.

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Thus, it is respectfully submitted that the process for loading and unloading cartons from a loading track is entirely different in the present invention than as disclosed in Kita or Becker taken either singly or in combination. Neither Kita or Becker, disclose a transport device that loads and unloads cartons onto a vertical conveyor via a lifting and pushing device, when the transport device is located on a loading track. Therefore, the combination of Kita and Becker would not make claim 21 obvious in view of the prior art. Therefore, it is respectfully submitted that claim 21 is patentable over the above cited references taken either singly or in combination.

Because the process of claim 36 includes the above recited steps, it is respectfully submitted that claim 36 is patentable over the above cited references taken either singly or in combination.

In addition, claims 35 and 37 are also patentable because neither Kita nor Becker show a system wherein a transport device can move out in aisles above a loading track to load into a vertical conveyor, the applicant believes that the remaining claims are patentable over the above cited references.

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In addition, Kita and Becker do not disclose a transport device that can move along the loading track below the floor of the vertical conveyors and along the multiple rack aisles.

Both claims 35 and 37 include the following element:

at least one loading track transport device moveable in a horizontal direction below said floor of said vertical conveyors, and along said plurality of guiding elements in said loading track wherein said at least one loading track transport device further comprises at least one lifting and pushing system for loading and unloading cartons from said plurality of vertical conveyors;

This feature is supported in the specification on page 12 lines 9-13 and in FIG. 3.

Because neither Kita nor Becker disclose this element, it is respectfully submitted that claims 35 and 37 are patentable over the cited references taken either singly or in combination.

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In addition, it is respectfully submitted that there can not be any reasonable expectation of success at arriving at the design of the present invention because the design of the present invention would be impossible if a party combined the designs of Kita and Becker. For example, the design of Becker could not work using the vertical lift of Kita because Kita discloses either a solid vertical lift or a paternoster which would ultimately fail when combining with the multiple aisles or the loading track of Becker. Instead, a significant amount of additional engineering and design work would be required to arrive at the process disclosed in claims 21 and 36 and the designs of claims 35 and 37. The effective design of the present invention including rack aisles extending over the loading track could not be expected from the design of the above references. Therefore, the applicant believes that independent claims 21, and 35-37 are patentable over the above cited references taken either singly or in combination.

Because claims 22 and 23 depend from claim 21 and claim 21 is believed to be allowable, the applicant believes that claims 22 and 23 are allowable as well. In addition, because claims 26-29, 31, 33 and 34 depend from claim 35, which is believed to be allowable, the applicant believes that these claims are allowable



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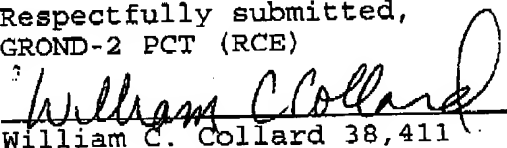
as well.

In summary, claims 21, 22, and 35-37 have been amended. claims 1-20, 24 30, and 32 have been canceled. No new matter has been added. In view of the foregoing, it is respectfully requested that the claims be allowed and that this case be passed to issue.

Applicant respectfully request that a timely Notice of Allowance be issued in this case.

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Enclosures: Petition for One-Month Extension of Time

CERTIFICATE OF FACSIMILE TRANSMISSION

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I hereby certify that this correspondence is being sent by facsimile transmission to the U.S.P.T.O. to Patent Examiner FOX at Group No., to 1-703-872-9306 on February 18, 2005.

  
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